

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

|                                     |   |                                 |
|-------------------------------------|---|---------------------------------|
| -----                               | X |                                 |
|                                     | : | <b>CASE MANAGEMENT ORDER</b>    |
| <b>IN RE WORLD TRADE CENTER</b>     | : | <b>NO. 7</b>                    |
| <b>DISASTER SITE LITIGATION</b>     | : |                                 |
|                                     | : | <b>21 MC 100 (AKH)</b>          |
| -----                               | X |                                 |
| -----                               | X | <b>SUPPLEMENT TO CLARIFYING</b> |
|                                     | : | <b>ORDER REGULATING</b>         |
| <b>THIS DOCUMENT APPLIES TO ALL</b> | : | <b>DISCOVERY AND SCHEDULING</b> |
| <b>WORLD TRADE CENTER DISASTER</b>  | : | <b>ORDER</b>                    |
| <b>SITE LITIGATION</b>              | : |                                 |
|                                     | : |                                 |
| -----                               | X |                                 |

ALVIN K. HELLERSTEIN, U.S.D.J.

IT IS HEREBY ORDERED THAT:

The following is intended as a supplement to this Court's Clarifying Order Regulating Discovery ("Core Discovery Order") dated November 27, 2007.

**I. Modification to Core Discovery Order**

- A. Section A(16) of the Core Discovery Order is modified to delete the reference to "personnel records". The revised Section A(16) shall read: "For each injury listed in number 14 above, identify the names and addresses of any and all healthcare providers Plaintiff saw and state specific dates of any such visit, diagnosis and/or treatment. Plaintiffs will provide full and complete medical records, as well as authorizations to obtain such records, for each Plaintiff from January 1, 1995 to date." The Court understands that Plaintiffs will use their best efforts to state the specific dates called-for in Section A(16), but that some Plaintiffs may not remember certain dates.

- B. Section A(17) is hereby added: “Each Plaintiff shall identify all employers, places of employment, and describe all jobs held between January 1, 1995 and September 11, 2001.”

## **II. The Core Discovery Schedule**

- A. Plaintiffs and Defendants (“the Parties”) shall commence responding to the Core Discovery Order as follows:
1. Both Parties shall complete the “First Production” of Core Discovery responses on or before March 7, 2008 for the first six hundred (600) plaintiffs who commenced actions (based upon the earliest filing date). *See* Exhibit “1”.
  2. As part of their “First Production” of Core Discovery responses on or before March 7, 2008, Defendants shall respond to Sections B(10) through and including B(12) of the Core Discovery Order.
  3. Both Parties shall complete the “Second Production” of Core Discovery responses on or before April 7, 2008 for the next one thousand two hundred (1,200) plaintiffs who commenced actions (based upon the filing date). *See* Exhibit “1”.
  4. Both Parties shall continue to produce Core Discovery responses for one thousand two hundred (1,200) plaintiffs every thirty (30) days thereafter, proceeding sequentially based upon the filing date. *See* Exhibit “1”.
- B. The procedures set forth in all sections of this Case Management Order shall also apply to all future filings of new cases or Check-Off Complaints.

- C. Nothing in this Case Management Order shall prevent a party from providing Core Discovery responses earlier than the schedule set forth above. The parties are encouraged to provide Core Discovery responses and responsive documents as soon as possible.

**III. Discovery To Be Produced By the Parties**

- A. With respect to Section A(16) of the Core Discovery Order, Plaintiffs will obtain and provide all medical records for each Plaintiff from January 1, 1995 to present. Plaintiffs also will provide all medical records currently in Plaintiffs' or Plaintiffs' counsel's possession. Where Plaintiffs or their counsel are not in possession of such medical records, Plaintiffs and/or their counsel will obtain such records dated from January 1, 1995 to present and, upon receipt, will provide Defendants' counsel with a copy of those records in PDF format or in any other format to which the Parties agree. With each Production scheduled in Section II(A), Plaintiffs will also provide Defendants' counsel with a copy of any executed authorizations or subpoenas used to obtain such records, as well as any certifications generated by the provider of the records. Plaintiffs and Plaintiffs' counsel are under a continuing duty to provide responsive medical records as they are obtained.
- B. Plaintiffs' counsel will, on a rolling basis, provide Defendants with executed HIPAA-compliant authorizations sufficient to permit Defendants to obtain any and all of Plaintiffs' medical records dated from January 1, 1995 to present. Plaintiffs' counsel shall file with the Court a list of all HIPAA-compliant authorizations provided to Defendants' counsel. Plaintiffs' counsel shall update this list, as needed.

- C. Where a Plaintiff's healthcare provider also is a Defendant in this action, and where Plaintiffs' counsel provides that Defendant's counsel with an appropriate HIPAA-compliant authorization, that Defendant will provide the Parties with the Plaintiff's medical records in the custody of that Defendant, making every effort to keep such production commensurate with the schedule set forth in Section II of this Order.
- D. In addition, upon receipt of an appropriate HIPAA-compliant authorization, a Defendant will provide the parties with the Plaintiff's medical fit-testing evaluations for the use of respiratory personal protective equipment performed by a physician or medical technician that are in the custody of a Defendant. Defendants will make every effort to keep production of records pursuant to this paragraph commensurate with the schedule set forth in Section II of this Order.
- E. Upon providing Core Discovery responses, and according to the schedule set forth in Section II(A), the Parties also will report on the status of their efforts to obtain medical records pursuant to Sections III(A), III(C) and III(D) of this Order. These reports will set forth the dates on which Plaintiffs' counsel requested medical records for each Plaintiff and the entities who were requested to provide those records. Defendants who are healthcare providers similarly will report on the status of their processing of Plaintiffs' authorizations and requests for medical records.

**IV. Deficient Core Discovery Responses**

- A. No party shall seek a sanction, including dismissal, against any party for failure to provide or complete Core Discovery responses unless and until the respective party's counsel has contacted counsel representing the other party in writing detailing the deficiencies in such Core Discovery Response and thirty (30) days have passed from the

date of that written demand without the disclosing party having responded or outlined a reasonable manner and time period within which the party will supplement or amend their Core Discovery Response. A party may thereafter seek all appropriate remedies and sanctions, including dismissal, provided that all such motions are accompanied by a certification that the movant has in good faith conferred or attempted to confer, in the manner set forth in this paragraph, with the person or party failing to make such disclosure or provide such discovery.

- B. Any Supplemental or Amended Core Discovery Responses shall be numbered in their captions (*e.g.* “First Amended Core Discovery Response”).

**V. Subpoenas**

- A. All subpoenas directed to the Parties to date are hereby quashed and any Orders directing them are hereby vacated. Subpoenas may be directed to non-parties in order to obtain information necessary to respond to those portions of Sections A(14) through A(17) of the Core Discovery Order requesting medical records and medical treatment information. Any future Subpoenas shall use the form attached to this Order as Exhibit 2.

**VI. Protective Order**

- A. The Court understands that counsel for the parties are in the process of developing a proposed Confidentiality and Protective Order or Orders to encompass and protect the disclosure of certain information to be provided pursuant to the Core Discovery Order. Such Protective Order or Orders are to be finalized by the parties, approved by the Court and entered prior to the disclosure of the information intended to be encompassed and protected.

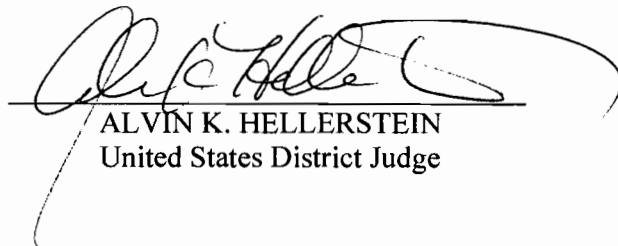
B. In developing a proposed Confidentiality and Protective Order or Orders, the Parties will employ the following schedule:

1. Defendants' Co-Liaison Counsel will provide a draft Protective Order(s) to Plaintiffs' Co-Liaison Counsel on or before January 31, 2008.
2. Plaintiffs' Co-Liaison Counsel will provide their comments on the draft Protective Order(s) on or before February 6, 2008.
3. Plaintiffs' Co-Liaison Counsel and Defendants' Co-Liaison Counsel will confer regarding the draft Protective Order(s) on or before February 7, 2008.
4. Defendants' and Plaintiffs' Co-Liaison Counsel will submit a joint letter with the proposed Protective Order(s) to the Court on or before February 11, 2008.

It is SO ORDERED.

Dated: New York, New York

January 9, 2008  
1/28/08



ALVIN K. HELLERSTEIN  
United States District Judge